

MONTANA LEGISLATIVE HISTORY

Chapter 209 19 99

Bill H _____ S 40 Original bill & history X c

H. Committee on NATURAL RESOURCES

Hearing Date(s) 3/5 X c

EXEC.
ACTION

_____ c

_____ c

_____ c

Date Out _____ c

S. Committee on NATURAL RESOURCES

Hearing Date(s) 1/8 X c

1/20 X c

EXEC.
ACTION 1/25 X c

_____ c

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

Montana
Legislative
Branch

Montana Legislature

Detailed Bill Information



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Bill Draft Number: LC0120

[Current Bill Text](#)

Bill Type - Number: SB 40

Short Title: Remove restrictions on sale of power from Broadwater project

Primary Sponsor: Duane Grimes

Bill Actions - Current Bill Progress: Became Law

Bill Action Count: 42

Action - Most Recent First	Date	Votes Yes	Votes No	Committee
Chapter Number Assigned	03/31/1999			
(S) Signed by Governor	03/30/1999			
(S) Transmitted to Governor	03/29/1999			
(H) Signed by Speaker	03/26/1999			
(S) Signed by President	03/26/1999			
(C) Sent to Printing	03/25/1999			
(S) Returned from Enrolling	03/25/1999			
(S) Sent to Enrolling	03/24/1999			
(H) Returned to Senate	03/23/1999			
(H) 3rd Reading Concurred	03/23/1999	91	7	
(H) Scheduled for 3rd Reading	03/23/1999			
(H) 2nd Reading Concurred	03/22/1999	89	4	
(H) Scheduled for 2nd Reading	03/22/1999			
(H) 2nd Reading Pass Consideration	03/20/1999			
(H) Scheduled for 2nd Reading	03/20/1999			
(H) Committee Report--Bill Concurred	03/10/1999			(H) Natural Resources
(H) Committee Executive Action--Bill Concurred	03/09/1999	19	0	(H) Natural Resources
(H) Hearing	03/05/1999			(H) Natural Resources
(H) Referred to Committee	02/16/1999			(H) Natural Resources
(H) First Reading	02/16/1999			
(S) Transmitted to House	01/29/1999			

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Sponsor, etc.	Last Name/Organization	First Name	Middle Initial
Requester	Legislative Council		
Drafter	Everts	Todd	
By Request Of	Department of Natural Resources and Cons		
Primary Sponsor	Grimes	Duane	

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[illegible]

Description	Revenue/Approp.	Vote Majority Req.	Subject Code
Water		Simple	WAT
State Finance (see also: Appropriations; Taxation Subjects)		Simple	STF

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Additional Bill Information

Probable Fiscal Note: No
Preintroduction Required: Y
Session Law Ch. Number: 209
DEADLINE
Category: General Bills
Transmittal Date: 02/24/1999
Return (with 2nd house amendments) Date: 04/01/1999

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Section Effective Dates

Section(s)	Effective Date	Date Qualified
All Sections	30-MAR-99	

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SENATE BILL NO. 40

INTRODUCED BY GRIMES D

BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT REMOVING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION'S POWER SALE RESTRICTIONS FOR POWER GENERATED BY A STATE FACILITY; AMENDING SECTION 85-1-509, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 85-1-509, MCA, is amended to read:

"85-1-509. Power generation by department authorized. (1) If ~~no~~ lease applications are not received under 85-1-503 or if the department rejects all lease applications under 85-1-504, the department may proceed to obtain any necessary license, permit, or exemption under federal law and commence construction and operation of a small-scale hydroelectric generation facility pursuant to the provisions of this chapter. Construction may not commence until the department has clear and convincing evidence that construction is economically feasible and is the most practical means by which the facility could be developed.

(2) Financing of construction and operation of the facility must be accomplished in a manner determined by the department to be most feasible.

~~(3) The department may not sell power generated at a facility except to a public utility, a rural electric cooperative, or a federal power marketing agency organized in Montana and selling power to Montana customers."~~

NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

- END -

MINUTES

MONTANA SENATE 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN WILLIAM CRISMORE**, on January 8, 1999
at 3:00 P.M., in Room 405 Capitol.

ROLL CALL

Members Present:

Sen. William Crismore, Chairman (R)
Sen. Dale Mahlum, Vice Chairman (R)
Sen. Vicki Cocchiarella (D)
Sen. Mack Cole (R)
Sen. Lorents Grosfield (R)
Sen. Tom Keating (R)
Sen. Bea McCarthy (D)
Sen. Glenn Roush (D)
Sen. Mike Taylor (R)
Sen. Bill Wilson (D)

Members Excused: Sen. Ken Miller (R)

Members Absent: None.

Staff Present: Larry Mitchell, Legislative Branch
Jyl Scheel, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 98, 1/8/1999; SJ 3,
1/8/1999; SB 40, 1/8/1999
Executive Action: SB 9; SB 29

HEARING ON SB 98

Sponsor: SENATOR KEN MESAROS, SD 25, CASCADE

{Tape : 1; Side : B; Approx. Time Counter : 5.6 - 10.1; Comments : None}

Closing by Sponsor:

SEN. COCCHIARELLA closed by thanking all the proponents. She feels all state agencies need to look at how they do business and do business right as there is a cost associated with doing it wrong. Regarding BMP's, in asking for a voluntary response from state agencies, we are not asking to give them more money to do that but to do the job right and to do the job we ask other people to do, other entities outside of government, incurring whatever those costs are. An additional cost savings is the educational materials have already been developed that state agencies could borrow, duplicate and pass out to train their employees. Not to say, some are not already doing it right, but we are encouraging them to take the roll in BMP's in protecting our water from non-point source pollution. She encouraged passage of this resolution.

{Tape : 1; Side : B; Approx. Time Counter : 10.1 - 11.4; Comments : None.}

HEARING ON SB 40

Sponsor: SENATOR DUANE GRIMES, SD 20, CLANCEY

Proponents:

Bud Clinch, Director, Department of Natural Resources and Conservation

Van Jamison, Missoula Electric Cooperatives.

Opponents: None

Opening Statement by Sponsor:

SENATOR GRIMES presented an issue that affects the power generation facility, owned by the State of Montana, located by Townsend. Years ago when Broadwater County needed further irrigation resources they built the dam and put in the river flow power generation facility that bases its generation capacity on natural river flow. Because of the deregulation environment the Department has some concerns. As a result of their concerns, there were also some concerns from electrical cooperatives around the state. He thanked **Wayne Wetzell**, from the Department, and **Van Jamison** who represents the Electrical Cooperatives, for being able to come up with some amendment language that satisfies all

parties. He passed out a sponsor authored amendment to the committee. **EXHIBIT(nas05a05)**

{Tape : 1; Side : B; Approx. Time Counter : 11.4 - 16.5; Comments : None.}

Proponent Testimony:

Bud Clinch, Director, DNRC, spoke in support of SB 40 as per **EXHIBIT(nas05a06)**.

Van Jamison, Missoula Electric Cooperative stated he was not here representing all coops but specifically Missoula Electric Coop. He stands in support of this bill that the sponsor has offered to amend. Their concern relates to the elimination of what would have been a reservation for Montana businesses from the power that is produced at a facility built with public funds in the State of Montana.

Hungry Horse and Libby Dam have been very important to Missoula Electric Coop. in being able to acquire inexpensive, reliable source of electricity. It is argued that any erosion of preference from publically owned facilities is a loss and one we would like to avoid if at all possible.

The amendment gives them flexibility to sell at the market price but also provides as well an opportunity for Rural Electric Coops like Missoula to take the price at the point of generation and say yes we are willing to accept that price and exercise our right of first refusal or no, this is too pricey, go ahead and sell it somewhere else. This is a good compromise that has been offered and with that Missoula Electric Coop would like to offer its support as well to SB 40.

{Tape : 1; Side : B; Approx. Time Counter : 16.5 - 25.1; Comments : None.}

Opponent Testimony: None.

Questions from Committee Members and Responses:

SENATOR GROSFIELD questioned what if the Department does not get any bids. **Ann Yates** responded we are like any other competitor, if we do not get any bids then we are out of luck.

SEN. GROSFIELD also questioned if there are no bids, this language says that a rural electric coop can meet the highest bid. If you do not get any bids, do they get it for nothing?

Ann Yates responded we are not bidding the power out. It is just like any other contract, you would go through negotiations. If there was no one else around that wanted to buy the power and a Rural Electric Coop wanted to buy the power then we would negotiate with the Rural Electric Coop. **SEN. GROSFIELD** stated it also says price equal. What if you have three coops that all want to take it at that price. **Ann Yates** responded we would have to sit down with all three. Obviously a ten-megawatt facility is not that big. That is an interesting issue that we have not considered. With the new deregulation there will be all kinds of competitors in the market we have not even considered, i.e. power marketers, power brokers, etc. We anticipate that those entities will bid a price probably equal to or higher than what the Rural Electric Coops are willing to pay.

SENATOR GROSFIELD questioned why a coop would even bid on the power. **Van Jamison** responded there may be circumstances where it would behoove us to do that where we wanted a block of power and wanted control over it. We would certainly be cognizant of what the market place was like. There is a certain attractiveness to owning blocks of power as opposed to being exposed to the vagary of the market. In the terms of these purchases, not only price will be included but also there will be a term to it. If you have a firm price for long term it might be worthwhile.

SENATOR GROSFIELD questioned in this dereg market are there any overtures being considered by the Department to sell the whole project? **Mr. Clinch** responded no. The Department is certainly open to consider that. They have had some tire kickers over the last few years but no serious offers.

Mr. Clinch then responded to **SEN. GROSFIELD's** question on what would happen if we did not have a bidder under that amendment? If we did not have a bidder we would be in precisely the situation that we think we would be in under the existing language. We would negotiate with whomever we thought might want to take our power to see if we could accept the bid and still operate at a profit. If there was no bidder and no one that would be willing to purchase it at the rate that would make it a profit for us, then perhaps we would not be operating. Our intent is to, in the event that situation arises, give us the maximum flexibility so that we can continue to make a profit, produce a revenue stream, pay off the bonds and continue to produce revenue for the rehabilitation of the water projects.

SENATOR KEATING referring to the Broadwater project as the only one referred to in this bill, asked if the Broadwater does not generate sufficient income to service the bonds entirely? Is Coal Tax money being used to offset the shortfall? **Mr. Clinch**

responded it was his understanding the revenues do offset the bonds. **Wayne Wetzel, DNRC** also reported they sold \$26MM dollars in Coal Tax back bonds, \$22.2M were tax exempt bonds and the rest were taxable bonds. The amount received from Montana Power has been making bond payments when due and, in the early years, there was not much left over. In these early years we were probably making \$300,000 a year to put into the hydro account.

SEN. KEATING asked what was the current balance on the bonds. **Wayne Wetzel** responded he was not certain of that number but could find out. The taxable bonds were a 10 year term and the tax exempt bonds were a 25 year term sold in 1987. **SEN. KEATING** stated there was about 10 years remaining on the bonds then and **Wayne Wetzel** replied yes.

Mr. Clinch stated the Department has no other power generation facilities for the record.

{Tape : 1; Side : B; Approx. Time Counter : 25.1 - 39.9; Comments : None}

Closing by Sponsor:

SEN. GRIMES thanked the committee for a good hearing. He offered an apology for not getting the amendment to Mr. Mitchell earlier. He offered if there was any further questions prior to executive action he would be happy to obtain information from either the Department or Mr. Jamison for the committee.

{Tape : 1; Side : B; Approx. Time Counter : 39.9 - 40.8; Comments : None}

EXECUTIVE ACTION ON SB 9

Motion/Vote: **SEN. KEATING** moved that **SB 9 DO PASS**. Motion carried unanimously 10-0.

EXECUTIVE ACTION ON SB 29

Motion/Vote: **SEN. MCCARTHY** moved that **SB 29 DO PASS**. Motion carried unanimously 10-0.

{Tape : 1; Side : B; Approx. Time Counter : 40.8 - 44; Comments : None}

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
AMENDMENTS TO SENATE BILL NO. 40
INTRODUCED BILL (WHITE COPY)

1. Page 1.

Following: line 23

Insert: "(3) A rural electric cooperative organized in Montana and selling power to Montana customers shall have a preference to purchase power generated by a facility if it agrees to purchase the power at a price equal to the highest competing offer for the power."

**TESTIMONY BEFORE THE SENATE NATURAL
RESOURCES COMMITTEE****SENATE BILL NO. 40****DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION****JANUARY 8, 1999**

A BILL FOR AN ACT ENTITLED: "AN ACT REMOVING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION'S POWER SALE RESTRICTIONS FOR POWER GENERATED BY A STATE FACILITY; AMENDING SECTION 85-1-509, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

INTRODUCTION

SB 40 was introduced at the request of the Department. I appreciate Senator Grimes' willingness to sponsor this bill for the agency.

SB 40 will amend Section 85-1-509(3) which states that the Department may not sell power generated at a facility except to a public utility, a rural electric cooperative, or a federal power marketing agency organized in Montana and selling power to Montana customers. This section should be amended to delete the restriction on to whom the Department can sell power generated at its facility.

Introduce Department personnel.

HISTORY

In the 1970s, the Department recognized that the funding available for the repair of its high hazard dams would fall far short of the Department's needs. The Department began to investigate means by which it could generate funding for its rehabilitation program. The Department determined that the addition of a hydroelectric facility to one of its current projects would be the most advantageous solution.

In 1987, the Department commenced the construction of a ten-megawatt hydroelectric facility at the Broadwater Project located on the Missouri River near Toston, Montana. The facility, known as the Broadwater Power Project (Broadwater), was completed in 1989, and is licensed by the Federal Energy Regulatory Commission. It was built under the auspices of the Public Utility Regulatory Policy Act of 1978 (PURPA), and qualifies under the terms of PURPA as small power producer. The Project's status under PURPA is commonly referred to as "qualifying facility" or "QF."

Pursuant to Section 85-1-510 MCA, the Department uses revenues generated by Broadwater to fund the rehabilitation of unsafe, high hazard dams owned by the State of Montana and managed by the Department. The money generated by the Project has been used on such critical projects as the repair of the East Fork of Rock Creek Dam near Phillipsburg, Montana, and the repair and enlargement of the Tongue River Dam near Decker, Montana. The revenues generated by the Project provide a vital funding source for the State's rehabilitation needs.

CURRENT AND FUTURE ACTIONS

The Department currently has a Power Purchase Agreement with the Montana Power Company, under which the Department sells all of its power generation to MPC. The Agreement is set to expire in 2023.

As this Committee is aware, the Electric Utility Industry Restructuring and Customer Choices Act of 1997, set in motion the deregulation of the electricity industry in Montana. This deregulation has and will bring about many changes in the industry. We have already seen the announcements by MPC of the sale of its generation facilities, and its intention to leave the electricity supply business due to concerns over its ability to compete in the deregulated market. The Department is also concerned about its ability to compete in the deregulated electricity market.

While the Department may currently have a Power Purchase Agreement with MPC, this may not always be the case. Section 69-8-211 MCA requires that MPC mitigate any stranded QF costs by renegotiating, buying-out, or buying down QF contracts. MPC has also indicated its intention to get out of the electricity supply industry, which would likely require the divestiture of any remaining power purchase agreements. In either case, MPC may buy-out the Department's Broadwater Power Purchase Agreement. The Department would then need to sell its power generation in the open market.

The current restrictions on the Department's ability to sell power are too strict for a deregulated market. The Department is currently restricted to selling its generation only to a public utility, a rural electric cooperative, or a federal power marketing agency organized in Montana and selling power to Montana customers. The deregulated market has and will continue to create entities not previously seen in the industry. One such example is a power marketer or broker. This type of entity was not even envisioned in the electricity industry at the time Broadwater was built. The new market has already reduced and may continue to reduce the number of entities that fit the current restriction. If necessary, the Department should be allowed to sell its generation to one of these entities or any other entity. Otherwise, the Department is at a competitive disadvantage with other suppliers, which could result in lower prices for and revenue from the Department's generation. Lower revenues would: 1) jeopardize our bond payments on the Broadwater project; 2) shift the financial burden of rehabilitating aging dams to some other funding source such as the general fund. Currently, Broadwater power sales provide approximately \$450,000 in each of the last 3 years toward repairing state-owned dams and canals. When the bonds are paid off the amount will be approximately \$4,800,000 in 2018. The restrictions on the Department's ability to sell its generation should be removed and the Department should be allowed flexibility in obtaining buyers for Broadwater power when its current Power Purchase Agreement terminates.

PURPOSE AND WHAT THE AMENDMENT SOLVES

The purpose of this legislation is to delete the restrictions on the Department's ability to sell power generation from its facility with the flexibility necessary in a deregulated electricity market. The amendments are summarized below.

- All of paragraph (3) in section 85-1-509 is proposed to be eliminated.

**MONTANA SENATE
1999 LEGISLATURE
NATURAL RESOURCES COMMITTEE**

ROLL CALL

DATE _____

1-8-9

[illegible]

DATE 1-8-99

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: SB 98, SJ 3, SB 40

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
ISABEL WELLS	TRUST UNKNOWN	SB 98	X	
ROBIN CUNNINGHAM	FISHING OUTFITTERS ASSN - OF MONTANA	SB 98	X	
MIKE MURPHY	MT WATER RESOURCES ASSN.	SB 98	✓	
JOHN MUNDINGER	MT STOCK GRADERS PUBLIC LAND OWNERS STATE WILDLIFE DISTRICTS	SB 98	✓	
Bob Lane	DFWP	SB 98	✓	
PATRICK HOFFERMAN	MONTANA LOGGING ASSN	SJ 3	✓	
Stan Broadshaw	Big Blackfoot TU	SB 98	✓	
Janet Ellis	MT Audubon	SJ 3 SB 98	✓	
Don Allen	WETA	SJ 3	✓	
Bill Snoddy	McDONALD GOLD PROS	SB 98		
Van Jamison	Montana Wildlife Education	SJ 3 SB 98	X	
Van Jamison	Missoula Electric Cooperative	SB 40	X	advisedly
Steve Schmitz		SJ 3		advisedly
Bud Clinch	ONRC	SJ 3 SB 40	X X	

CHRIS GALLIES

Cary Hegreberg

VISITOR REGISTER

MT Wood Products

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MINUTES

MONTANA SENATE 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN WILLIAM CRISMORE**, on January 20, 1999
at 3:00 P.M., in Room 405 Capitol.

ROLL CALL

Members Present:

Sen. William Crismore, Chairman (R)
Sen. Dale Mahlum, Vice Chairman (R)
Sen. Vicki Cocchiarella (D)
Sen. Mack Cole (R)
Sen. Lorents Grosfield (R)
Sen. Tom Keating (R)
Sen. Bea McCarthy (D)
Sen. Ken Miller (R)
Sen. Glenn Roush (D)
Sen. Mike Taylor (R)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Larry Mitchell, Legislative Branch
Jyl Scheel, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted:
Executive Action: SB 40; SB 48

EXECUTIVE ACTION ON SB 40

Motion: SEN. COCCHIARELLA moved that SB 40 DO PASS AS AMENDED
according to AMENDMENT SB004003.alm.

Discussion: **SENATOR COCCHIARELLA** stated there was concern during the hearing regarding why just electrical cooperatives were being given the right of first refusal. This amendment addresses allowing other public entities to have the right of first refusal to help resolve that concern.

SENATOR KEATING stated, in the body of the bill, by deleting the restriction where the Department can sell their power, opens the door for them to sell the power to anyone that is willing to buy. As a rule, they would offer sale of the electricity in open bid, hope they get a good price and make a deal with the high bidder. The amendment still gives a preference and anytime you establish a preference you throw cold water on a truly competitive public bid. By establishing any kind of preference for anybody complicates things terribly when it comes to the sale of a product, especially by a state office, because they so many hoops to jump through anyhow. I would suggest we not amend the bill and allow the Department to sell if and when they are able to. They have a long range contract now that they cannot sell unless that contract is fulfilled or canceled. It is a 17 year contract and I doubt the state is going to cancel because it is too good a price.

SENATOR COCCHIARELLA stated she thought the most important words in the amendment are "electrical supplier licensed in Montana". This is a jobs local Montana protection preference. The only people given a preference are licensed in Montana. This restricts or does not give right of first refusal to anyone outside the state. The preference is, this amendment protects anyone in Montana who is licensed. It does not exclude anyone in the Montana market, who is licensed here, from competing in the bidding process. Montana licensed businesses have the preference over someone out-of-state.

SENATOR TAYLOR added that he is always nervous when preferences are set. He stated he was certainly for jobs and income but Montana has a history of having the most restrictive, regulated, protective bills in the nation on businesses so they are protected. He was not sure preference could be given legally and thought there was a federal statute saying there are problems with that. We should be sure the law does allow this because this is an electrical utility. He was also concerned if there was a protection issue here, would it eventually drive cost.

Ann Yates, DNRC Legal Counsel, responded she was not completely certain which statute he was referring to. She did not see anything at this time that would be a problem. **SEN. TAYLOR** said to check out the rules of interstate commerce.

SENATOR COCCHIARELLA stated she would withdraw her motion on the amendment and on the bill in order to allow time to do further checking. She would not want to put an amendment on anything that is unconstitutional or illegal. She felt there were too many misconceptions right now and would like those clarified before executive action is taken.

SENATOR GROSFIELD stated another question to be checked on is this preference would go to the electricity suppliers licensed in Montana. He questioned what one has to do to become licensed as an electricity supplier. Do you have to be selling or about to sell power in Montana to be licensed here or are there a bunch of suppliers that are considering selling someday in Montana so they get the license to cover themselves in case the opportunity arises.

Ann Yates responded the Public Service Commission is in the process of making the rules for licensing electricity suppliers in Montana. The way it would probably work, and which is not finalized yet, is if someone is considering selling electricity in Montana they would go ahead and get a license. She did not think it would affect interstate commerce because anybody doing business in Montana has to be licensed here. You can be from out of state but you still have to be licensed.

CHAIRMAN CHRISMORE said action on this bill would be postponed until Monday to give more time to look into the amendment and legalities.

{Tape : 1; Side : A; Approx. Time Counter : 0 - 8.5; Comments : None.}

EXECUTIVE ACTION ON SB 48

Motion/Vote: SEN. GROSFIELD moved that SB 48 BE AMENDED. Motion carried unanimously.

Discussion: SENATOR GROSFIELD passed out the amendments and a gray bill that incorporates the amendments into the bill for the Committee's convenience. EXHIBIT(nas15a01) There are no substantive changes in the bill but the bill as presented is confusing. These amendments clarify this bill. **Jeff Hagener** and **Bud Clinch** are here from the Department to walk us through them and answer any questions.

Jeff Hagener, Trust Fund Administrator for DNRC, stated most of the amendments are a result of SEN. GROSFIELD'S concerns and we also discussed these with **Roger Lloyd** from the **Legislative Fiscal**

MONTANA SENATE
1999 LEGISLATURE
NATURAL RESOURCES COMMITTEE

ROLL CALL

DATE _____

January 20, 1999

[illegible]

MINUTES

MONTANA SENATE 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN WILLIAM CRISMORE**, on January 25, 1999
at 3:00 P.M., in Room 405 Capitol.

ROLL CALL

Members Present:

Sen. William Crismore, Chairman (R)
Sen. Dale Mahlum, Vice Chairman (R)
Sen. Vicki Cocchiarella (D)
Sen. Mack Cole (R)
Sen. Lorents Grosfield (R)
Sen. Tom Keating (R)
Sen. Bea McCarthy (D)
Sen. Ken Miller (R)
Sen. Glenn Roush (D)
Sen. Mike Taylor (R)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Larry Mitchell, Legislative Branch
Jyl Scheel, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 235, 1/25/1999
Executive Action: SB 40

HEARING ON SB 235

Sponsor: SENATOR JACK WELLS, SD 14, BOZEMAN

SENATOR GROSFIELD stated, according to the testimony, it was his impression people were interested in protecting the water right claims they now have, in the adjudication process that is on-going. Would this bill not need a retroactive applicability date in order to give them any help? Otherwise it is just effective upon passage and approval and it would probably not affect any prior rights and proceedings without a retroactive applicability date. **Larry Mitchell** agreed that could be a concern. He would check with chief legal counsel.

{Tape : 1; Side : B; Approx. Time Counter : 0 - 7.3; Comments : None.}

Closing by Sponsor:

SENATOR JACK WELLS stated this bill is narrow in scope, a lot of criteria has been listed the municipalities would have to meet in order to try to protect these water rights. The questions raised are important and perhaps the effectivity of the bill may be addressed. In general, they tried to structure something that was best for the most in the sense of the numbers of people that would be affected in these municipalities across western Montana as the population grows and the need for additional water is required. Regarding the comment that it may open the door for other things, other water right challenges could be faced in future legislative efforts and would probably appear before this committee to handle those kind of things. In the sense of the A-closed watersheds, he thinks this bill would be a good step to protect the future for these communities and their aquifers and thanked the committee for the good hearing.

{Tape : 1; Side : B; Approx. Time Counter : 7.3 - 8.8; Comments : None.}

EXECUTIVE ACTION ON SB 40

Motion/Vote: **SEN. KEATING** moved that **SB 40 DO PASS**. Motion carried 9-0. No amendments were offered.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN BILL TASH**, on March 5, 1999 at 3:00 P.M., in Room 437 Capitol.

ROLL CALL

Members Present:

Rep. Bill Tash, Chairman (R)
Rep. Hal Harper, Vice Chairman (D)
Rep. Cindy Younkin, Vice Chairman (R)
Rep. Rod Bitney (R)
Rep. Aubyn A. Curtiss (R)
Rep. Rick Dale (R)
Rep. Ron Erickson (D)
Rep. David Ewer (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Dan McGee (R)
Rep. Douglas Mood (R)
Rep. Karl Ohs (R)
Rep. Scott J. Orr (R)
Rep. Jay Stovall (R)
Rep. Carley Tuss (D)
Rep. Doug Wagner (R)

Members Excused: Rep. Bill Eggers (D)
Rep. Bob Raney (D)
Rep. Bob Story (R)

Members Absent: None.

Staff Present: Todd Everts, Legislative Branch
Deb Thompson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 40, SB 64, SB 72, 3/2/1999
Executive Action: SB 40, SB 64, SB 72, SJ 3

HEARING ON SENATE BILL 40

Sponsor: Sen. Duane Grimes, SD 20, presented SB 40. The bill would delete the restrictions on the department's ability to sell power from its facility and allow a little more flexibility in the new deregulated environment. He pointed out Montana Power had offered to buy their way out of the contract above Toston. This contract may have a broader market than what they are constricted at under current law. This would allow them to maximize return on the state's investment, protect the bond payments and use the proceeds to rehabilitate dams across Montana.

Proponents: Bud Clinch, Director of Department of Natural Resources and Conservation, spoke for the bill.

EXHIBIT(nah50a01) He described the Toston Dam facility that was built in 1940 for irrigation purposes. He said the department had been looking for a potential source of revenue to have revenue generated on an annual basis to provide resources for rehabilitation for some of the other state owned projects. In 1987 the department retrofitted Toston Dam for hydro-generation and entered into a 30 year contract with Montana Power for the sale of that power. The revenue generated provide revenues for four things: operation and maintenance costs to run the facility, annual payment into maintenance rehabilitation account, pay back on bond payments and an earnings account for repair of other facilities around the state. The bill proposes to amend the statute, a provision that said the department could not sell power generated at a facility except to a public utility, a rural electric coop or a federal power marketing agency selling to Montana customers. This language was negotiated at the time to keep the state from competing.

Opponents: None.

Questions from Committee Members and Responses: Rep. McGee asked why the original restrictions were put in place. Director Clinch replied under the regulating environment it was delineated who could market power. {Tape : 1; Side : A; Approx. Time Counter : 7.1}

Closing by Sponsor: Sen. Grimes closed. Rep. Masolo will carry the bill. {Tape : 1; Side : A; Approx. Time Counter : 15.6}

HEARING ON SENATE BILL 64

Sponsor: Sen. Arnie Mohl, SD 39, presented SB 64.

EXHIBIT(nah50a02) He discussed gravel pit permitting

Opponents: None.

Questions from Committee Members and Responses: Rep. Erickson asked if the Uniform Enforcement Act that was tabled in the Senate should be put back in. Jan Sensibaugh replied it should not since it was very contentious for both sides. Rep. Erickson asked if the state was in compliance with EPA regarding nitrate and arsenic. Sensibaugh said SB 499 addresses the EPA concerns.

Closing by Sponsor: Sen. Keenan closed.

EXECUTIVE ACTION ON SENATE BILL 40

Rep. Harper **MOVED DO CONCUR SB 40**. He said this was a clear need. The reason the provisions were tucked in was to appease the power companies and the coops that the state wasn't going into the power generation and sale business directly to customers. Now we need to take it out because if we don't we'll be prohibited from selling this now that the industry is non-regulated.

The question was called. The motion **PASSED** unanimously.

EXECUTIVE ACTION ON SENATE BILL 72

Rep. McGee **MOVED DO CONCUR**. Rep. Younkin **MOVED** an amendment regarding CI-75. The question was called on the amendment. The motion **PASSED** unanimously.

Rep. Younkin **MOVED DO CONCUR AS AMENDED**. Rep. Orr felt the nitrate levels were set too low and he was against the bill. He pointed out that by adopting lower standards it has added costs to the treatment of water that the citizens have had to bear. The fines were increased from \$500 to \$1000 only because the EPA said we had to or we would lose primacy and he did not like that kind of federal top down control. **{Tape : 1; Side : A; Approx. Time Counter : 57.5}**

The question was called. The motion **PASSED** 15-4 with Reps. McGee, Orr, Curtiss and Wagner voting no.

EXECUTIVE ACTION ON SENATE JOINT RESOLUTION 3

Rep. Curtiss **MOVED DO CONCUR**. She said she encouraged attention to reporting. The question was called. The motion **PASSED** 19-0.

MONTANA SENATE
1999 LEGISLATURE
NATURAL RESOURCES COMMITTEE

ROLL CALL

DATE _____

January 25, 1999

[illegible]



SENATE STANDING COMMITTEE REPORT

January 26, 1999

Page 1 of 1

Mr. President:

We, your committee on Natural Resources report that Senate Bill 40 (first reading copy -- white) do pass.

Signed: *William Crismore*
Senator William Crismore, Chair

- END -

Committee Vote:
Yes 9, No 0.

and

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TESTIMONY BEFORE THE HOUSE NATURAL
RESOURCES COMMITTEE

SENATE BILL NO. 40

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

March 5, 1999

A BILL FOR AN ACT ENTITLED: "AN ACT REMOVING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION'S POWER SALE RESTRICTIONS FOR POWER GENERATED BY A STATE FACILITY; AMENDING SECTION 85-1-509, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

INTRODUCTION

SB 40 was introduced at the request of the Department. I appreciate Senator Grimes willingness to sponsor this bill for the agency.

SB 40 will amend Section 85-1-509(3) which states that the Department may not sell power generated at a facility except to a public utility, a rural electric cooperative, or a federal power marketing agency organized in Montana and selling power to Montana customers. This section should be amended to delete the restriction on to whom the Department can sell power generated at its facility.

HISTORY

In the 1970s, the Department recognized that the funding available for the repair of its high hazard dams would fall far short of the project's needs. The Department began to investigate means by which it could generate funding for project rehabilitation. The Department determined that the addition of a hydroelectric facility to one of its current projects would be the most advantageous solution.

In 1987, the Department commenced the construction of a ten-megawatt hydroelectric facility at the Broadwater Project located on the Missouri River near Toston, Montana. The facility, known as the Broadwater Power Project (Broadwater), was completed in 1989, and is licensed by the Federal Energy Regulatory Commission. It was built under the auspices of the Public Utility Regulatory Policy Act of 1978 (PURPA), and qualifies under the terms of PURPA as small power producer. The Project's status under PURPA is commonly referred to as "qualifying facility" or "QF."

Pursuant to Section 85-1-510 MCA, the Department uses revenues generated by Broadwater to fund the rehabilitation of unsafe, high hazard dams owned by the State of Montana and managed by the Department. The money generated by the Project has been used on such critical projects as the repair of the East Fork of Rock Creek Dam near Phillipsburg, Montana, and the repair and enlargement of the Tongue River Dam near Decker, Montana. The revenues generated by the Project provide a vital funding source for the State's rehabilitation needs.

CURRENT AND FUTURE ACTIONS

The Department currently has a Power Purchase Agreement with the Montana Power Company, under which the Department sells all of its power generation to MPC. The Agreement is set to expire in 2023.

As this Committee is aware, the Electric Utility Industry Restructuring and Customer Choices Act of 1997, set in motion the deregulation of the electricity industry in Montana. This deregulation has and will bring about many changes in the industry. We have already seen the announcements by MPC of the sale of its generation facilities, and its intention to leave the electricity supply business due to concerns over its ability to compete in the deregulated market. The Department is also concerned about its ability to compete in the deregulated electricity market.

While the Department may currently have a Power Purchase Agreement with MPC, this may not always be the case. Section 69-8-211 MCA requires that MPC mitigate any stranded QF costs by renegotiating, buying-out, or buying down QF contracts. MPC has also indicated its intention to get out of the electricity supply industry, which would likely require the divestiture of any remaining power purchase agreements. MPC has contacted DNRC to express their interest in buying out the Broadwater Power Purchase Agreement in the near future. The Department would then need to sell its power generation in the open market.

The current restrictions on the Department's ability to sell power are too strict for a deregulated market. The Department is currently restricted to selling its generation only to a public utility, a rural electric cooperative, or a federal power marketing agency organized in Montana and selling power to Montana customers. The deregulated market has and will continue to create entities not previously seen in the industry. One such example is a power marketer or broker. This type of entity was not even envisioned in the electricity industry at the time Broadwater was built. The new market has already reduced and may continue to reduce the number of entities that fit the current restriction. If necessary, the Department should be allowed to sell its generation to one of these entities or any other entity. Otherwise, the Department is at a competitive disadvantage with other suppliers, which could result in lower prices for and revenue from the Department's generation. Lower revenues would: 1) jeopardize our bond payments on the Broadwater project; 2) shift the financial burden of rehabilitating aging dams to some other funding source such as the general fund. Currently, Broadwater power sales provide approximately \$450,000 in each of the last 3 years toward repairing state-owned dams and canals. When the bonds are paid off the amount will be approximately \$4,800,000 in 2018. The restrictions on the Department's ability to sell its generation should be removed and the Department should be allowed flexibility in obtaining buyers for Broadwater power when its current Power Purchase Agreement terminates.

PURPOSE AND WHAT THE AMENDMENT SOLVES

The purpose of this legislation is to delete the restrictions on the Department's ability to sell power generation from its facility with the flexibility necessary in a deregulated electricity market. The amendments are summarized below.

- All of paragraph (3) in section 85-1-509 is proposed to be eliminated.

HOUSE OF REPRESENTATIVE ROLL CALL

NATURAL RESOURCES

COMMITTEE

DATE 3-5-99

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bill Tash, Chairman	✓		
Rep. Hal Harper, Vice Chair	✓		
Rep. Cindy Younkin, Vice Chair	✓		
Rep. Rod Bitney	✓		
Rep. Aubyn Curtiss	✓		
Rep. Rick Dale	✓		
Rep. Bill Eggers			✓
Rep. Ron Erickson	✓		
Rep. David Ewer	✓		
Rep. Gail Gutsche	✓		
Rep. Joan Hurdle	✓		
Rep. Dan McGee	✓		
Rep. Douglas Mood	✓		
Rep. Karl Ohs	✓		
Rep. Scott Orr	✓		
Rep. Bob Raney			✓
Rep. Bob Story			✓
Rep. Jay Stovall	✓		
Rep. Carley Tuss	✓		
Rep. Doug Wagner	✓		



HOUSE STANDING COMMITTEE REPORT

March 9, 1999

Page 1 of 1

Mr. Speaker:

We, your committee on **Natural Resources** report that **Senate Bill 40** (third reading copy -- blue) be concurred in.

Signed: _____

Bill Tash
Representative Bill Tash, Chair

To be carried by Representative Gay Ann Masolo

- END -

Committee Vote:

Yes 19, No 0.

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HOUSE OF REPRESENTATIVES
VISITORS REGISTER

NATURAL RESOURCES

DATE 3/5/99

BILL NO. _____ SPONSOR(S) _____

PLEASE PRINT

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NAME AND ADDRESS	REPRESENTING	Support	Oppose
BUD CLINCH	DNRC	SB-40	
JACK STULTS	DNRC	SB40	
Jon Dilliard	DEQ	SB72	
Steve Pitcher	City of Pitts	SB72	
Don Allen	WETA	SB72	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

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